

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

<b>IN THE MATTER OF:</b>  <b>WELLMAN DYNAMICS CORPORATION;</b> Permit No. 88-SDP-04-86P	<b>ADMINISTRATIVE CONSENT ORDER</b>  <b>NO. 2013-SW- 12</b>
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**TO: Matt Thelen**  
Environmental Engineer  
Wellman Dynamics Corporation  
1746 Commerce Road  
Creston IA 50801

**I. SUMMARY**

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Wellman Dynamics Corporation (Wellman Dynamics) for the purpose of establishing a schedule for Wellman Dynamics to return to compliance with the financial assurance requirements associated with operating an industrial landfill.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**  
Bill Blum, Program Planner 3  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8176

**Relating to this Order to:**  
Jon C. Tack, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8889

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Wellman Dynamics, aka Fansteel/Wellman Dynamics, is best known as a primary supplier of complex components for helicopters, missiles, rocket engines, jet engines, and structural parts for both military and commercial aircraft. Non-aerospace applications include magnesium transfer pumps for the oilfield industry and castings for computer chip manufacturing. The Wellman Dynamics Creston plant is equipped for complete casting manufacturing and processing. Over 20 different aluminum and magnesium alloys are routinely cast.

2. Wellman Dynamics owns and operates an industrial landfill that is permitted by the DNR for disposal of its used foundry sand from the Creston manufacturing plant. The legal description for the landfill is: Part of the SE ¼, NE ¼, Section 7, T12N, R30W, 10 Acres, Union County, Iowa.

3. Pursuant to Iowa Code section 455B.306(9) and 567 IAC 115.31, an industrial sanitary landfill must maintain a financial assurance instrument to ensure the closure and post-closure care of the landfill. Wellman Dynamics has chosen to provide financial assurance through the maintenance of a trust fund. A trust fund may be funded over a ten-year pay in period or the life of the landfill, whichever is shorter. The initial payment into the trust fund was required to be made within 30 days of close of the first fiscal year that began after October 31, 2007. Subsequent payments into the trust fund must be made within 30 days of close of the fiscal year annually (January 30<sup>th</sup> for Wellman Dynamics). Proof of compliance with the financial assurance requirements must be submitted by the owner yearly by April 1 using DNR Form 542-8090, Sanitary Landfill Financial Assurance Report Form. Information on the form includes the current cost estimates for landfill closure and postclosure care, financial assurance mechanism being used, current fund balance and projected fund deposit for the current fiscal year. The current estimated closure and postclosure costs for Wellman Dynamics total \$1,585,372.

4. On March 30, 2011, Wellman Dynamics submitted an annual Financial Assurance Report Form. The projected deposit to the Wellman Dynamics trust fund was \$151,223.57. On August 26, 2011, DNR approved Wellman Dynamic's 2011 financial assurance submittal, including project deposit amount of \$151,223.57, to be made no later than January 30, 2012.

5. On January 23, 2012, Wellman Dynamics submitted a request to DNR for an extension of time until July 31, 2012 on the required \$151,223.57 trust fund deposit otherwise due by January 30, 2012. On January 27, 2012, the DNR agreed to allow Wellman Dynamics to return to compliance by making partial deposits to the trust fund pursuant to the following schedule:

\$30,000 by January 31, 2012;  
\$25,000 by February 29, 2012;

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\$25,000 by March 31, 2012;  
\$25,000 by April 30, 2012;  
\$25,000 by May 30, 2012; and  
\$21,223.57 by June 30, 2012.

6. On March 23, 2012, Wellman Dynamics submitted an annual Financial Assurance Report Form. The projected deposit to the Wellman Dynamics trust fund was \$176,132. On October 17, 2012, DNR approved Wellman Dynamic's 2012 financial assurance submittal, including project deposit amount of \$176,132, to be made no later than January 30, 2013.

7. On January 23, 2013, Wellman Dynamics requested an extension until December 31, 2013 for the annual financial assurance deposit into the Wellman Dynamics trust fund, due January 30, 2013. During further discussion between Alex Moon of the DNR and Matt Thelen of Wellman Dynamics, on the same date, it was determined that Wellman Dynamics had not made the final two deposits of the agreed upon schedule for May 30<sup>th</sup> and June 30<sup>th</sup>, 2012.

8. Negotiations and discussions have continued between the DNR and Wellman Dynamics since January to determine options reasonably achievable for Wellman Dynamics to return to compliance with financial assurance requirements.

9. On March 22, 2013, Wellman Dynamics submitted an annual Financial Assurance Report Form. The projected deposit to the Wellman Dynamics trust fund is \$201,228, to be made no later than January 30, 2014. The account balance of the trust was \$625,943.62 on May 8, 2013.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123. The Commission has adopted 567 IAC 115 to provide for the regulation of industrial monofills.

2. Pursuant to Iowa Code section 455B.306(9), a person operating a sanitary disposal project shall provide a financial assurance instrument to the DNR. Available financial assurance mechanisms and specific requirements for closure and postclosure care accounts are set forth at 567 IAC 115.31.

3. Wellman Dynamics has elected to use a trust fund as its financial assurance instrument as allowed under paragraph 115.31(6)"a." Payments into the trust fund must be made annually by Wellman Dynamics over ten years or over the remaining life of the landfill, whichever is shorter. This period is referred to as the pay-in period. The initial

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payment into the trust fund was required to be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007. Subsequent payments into the trust fund must be made within 30 days of close of the fiscal year annually (January 30<sup>th</sup> for Wellman Dynamics). Wellman Dynamics has failed to make the required annual deposits by the date due for the prior two fiscal years. The failure to make timely deposits constitutes a violation of 567 IAC 115.31(6)"a".

**V. ORDER**

The DNR hereby orders Wellman Dynamics, and Wellman Dynamics agrees, to comply with the following schedule:

1. Wellman Dynamics shall deposit a minimum of \$25,000 per month into its financial assurance trust fund for the industrial landfill designated SDP #88-SDP-04-86P. The required payments shall begin on the 15th day of the first month following the execution of this Order and continue to be made by the 15th of each month through January 15, 2015. Verification of deposit shall be provided to the DNR within 7 calendar days of the deposit into the trust fund.

2. After the annual financial assurance report is submitted by Wellman Dynamics in 2014, the DNR and Wellman Dynamics will determine whether adjustments to the payment schedule are necessary to achieve compliance by January 15, 2015. If changes are necessary, the parties agree that the monthly payment amount shall be adjusted accordingly.

3. Upon completion of the payment schedule established pursuant to Paragraph #1, above, Wellman Dynamics may return to making annual deposits as required by rule. Nothing in this Order or Chapter 567-115 shall be deemed to prohibit a permit holder from funding a trust account through multiple deposits completed prior to the annual deposit deadline.

4. A stipulated penalty of \$1,000 per month is hereby assessed for each month in which the required deposit is not made by the date due. The stipulated penalty shall be paid to the DNR within 30 days of the occurrence of the violation.

**VI. PENALTY**

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The

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Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to the provisions of chapter 10, the DNR has determined that a stipulated penalty is an appropriate method to return the facility to compliance.

a. Economic Benefit. The violations which are the subject of this Order are unique in regard to the determination of an economic benefit to Wellman Dynamics. The violation is that Wellman Dynamics has failed to deposit its own funds into a trust fund of which it is the sole owner. The economic benefit realized is in the choice by Wellman Dynamics in how the funds will be utilized. The required deposit would remain an asset of Wellman Dynamics. For these reasons, the DNR has determined that the stipulated penalty is an adequate mechanism to ensure compliance.

b. Gravity of the Violation. Factors to be considered in determining the gravity of a violation include the actual or threatened harm to the environment or the public health and safety and the threat to the integrity of the regulatory program. In this case the potential harm would occur if Wellman Dynamics abandoned the landfill without properly closing and performing post closure care. This eventuality would be a severe threat to ground and surface waters. However, in this case the landfill is adjacent to the active production facility, owned by the operator, and subject to a 2003 federal consent order to address RCRA violations. So long as Wellman Dynamics is returned to compliance with the financial assurance requirements prior to being released from the federal consent order, there is minimal risk of harm to human health and the environment due to these violations. The DNR has considered these factors in establishing the stipulated penalties herein.

c. Culpability. The violation of the financial assurance requirements by Wellman Dynamics has been ongoing for several years. Although Wellman Dynamics has been proactive in attempting to reach agreements with the DNR for past and currently proposed payment schedules, the past schedule was not met. Therefore, a stipulated penalty is necessary to address any violations of the payment scheduled contained herein.


## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Wellman Dynamics. For that reason Wellman Dynamics waives its rights to appeal this Order or any part thereof.

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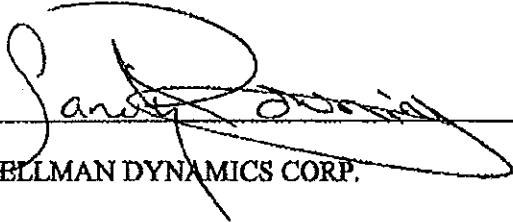
**VIII. NONCOMPLIANCE**

Compliance with sections V.1-V.3 of the Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.307. The DNR reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this Order.

  
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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 31 day of  
May, 2013

*Bruce Treanor Deputy Director  
Acty ES*

  
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WELLMAN DYNAMICS CORP.

Dated this 30 day of  
May, 2013

Field Office #4: Jon Tack; Chad Stobbe; VI.B(2)(e)